



THE PRINCE GEORGE'S COUNTY GOVERNMENT
Office of Audits and Investigations

October 10, 2019

MEMORANDUM

TO: Robert J. Williams, Jr.
Council Administrator

William M. Hunt
Deputy Council Administrator

THRU: David H. Van Dyke *DHV*
County Auditor

FROM: Josh Hamlin *JH*
Senior Policy Analyst

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Policy Analyst

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Senior Legislative Auditor

RE: Policy Analysis and Fiscal Impact Statement
CB-65-2019 Pesticides Ban

Legislative Summary

CB-65-2019, sponsored by Councilmembers Dernoga, Anderson-Walker, Ivey, Taveras, and Streeter, was presented on September 24th, 2019. CB-65-2019 emphasizes the Council's concern with widespread use of pesticides in the County, and its associated health concern- on humans, with the importance on children's health; animal life, as well as bees and other pollinators; and its effects on water quality and aquatic life.

The Bill requires public notice via sign postings on areas before and after pesticides are applied, with some exceptions. It restricts use of certain pesticides, and requires the County and M-NCPPC to develop plans in using less toxic and alternative methods to reduce insect infestations and cultivate healthy lawns, while minimizing potential hazards to people and other animals and aquatic life. This plan includes a pesticide-free parks program facilitated through a turf management consultant. The legislation does allow for exceptions in using pesticides, such as agricultural use, protection of public health, and other instances that would ultimately protect the public.

The Bill also has a public outreach and education component to it, which will be executed by the County Executive's office. This information would include best practices for pesticide-free lawns and products that minimize the use of registered pesticides. Additionally, the legislation spells out storage and handling

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protocol of pesticides, commercial and private applicator responsibilities, and outlines violations and the associated penalties.

Background/Current Law

The County currently has some regulation and enforcement of pesticide applications (Subtitle 12.05.04 section 12) by the Health Department which requires posting of signs 24 hours prior to and immediately after application. Signs must remain posted for 3-7 days after pesticide application. Reasonable exceptions, like golf courses and utility rights-of-way which have limited public access and may not abut residential areas, are included in the legislation. The Health Department is also required to provide specific information, like safety precautions for commonly used pesticides to the public, upon request. Pesticide applicators are required to give their customers contact information of the appropriate government agency that takes complaints concerning pesticide applications, as well as a statement indicating applicators must be properly licensed by the Maryland Department of Agriculture, the names of pesticides they used, and list of precautions.

Properties operated by the Washington Suburban Sanitation Commission (WSSC), The Maryland-National Capital Park & Planning Commission (M-NCPPC), and Department of Public Works & Transportation (DPW&T) may be exempted of these regulations if the adverse effects of pesticides application are minimal on the public, or if the compliance to these regulations is burdensome and/or impractical.

CB-65-2019 is closely modeled after the Montgomery County (Maryland) Healthy Lawns Act (52-14) which passed in 2015, was overturned by a circuit court in 2017, and was then reversed by Maryland's Court of Special Appeals earlier this year. The Maryland Court of Appeals denied a petition for certiorari this summer, so local governments in Maryland have some ability to regulate pesticides more stringently than the State does.

Resource Personnel

Council District 1 Staff

Assumptions, Methodology, and Policy Analysis

This Bill would significantly expand the current County law regulating pesticides. It clearly defines the difference between "Listed Pesticide", which is: (1) a pesticide with active ingredients recommended by the National Organic Standards Board (NOSB); or (2) designated as a "minimum risk pesticide" under the Federal Insecticide, Fungicide, & Rodenticide Act (FIFRA), or exempt of EPA Registration under FIFRA 25 (b), and "Registered Pesticide", which is a pesticide registered by the U.S. Environmental Protection Agency (EPA) and labeled pursuant to FIFRA. The difference between these two classes of pesticides is important because *listed pesticides* go before another level of review by the NOSB experts that conduct health and safety tests, resulting in the least toxic pesticide products on the market; *registered pesticides* only undergo EPA review through industry data that may not evaluate certain impacts on health and environmental effects on humans and other animal life.¹

¹ Beyond Pesticides staff, Washington, DC.

Additionally, the legislation prohibits the application of a *registered pesticide* (but not a *listed pesticide*) on County-owned property and certain private property (lawns, playgrounds, mulched recreation areas, children's facilities or the grounds of children's facilities). These prohibitions would encourage the use of listed pesticides, which again have been scrutinized under further health and safety reviews and have been designated as "minimum risk pesticides". There are exceptions in prohibiting the use of registered pesticides, which include: (1) control weeds (as defined); (2) control invasive species listed in a regulation; (3) control disease vectors; (4) control biting or stinging insects or stinging plants; (5) control organisms that threaten the health of trees or shrubs; (6) maintain property as part of efforts by a public utility to comply with applicable vegetation management provisions of any federal, state, or local law or regulation; (6) control indoor pests, if applied around or near the foundation of a building; control pests while engaged in agriculture; and (7) control a pest outbreak that poses an imminent threat to human health or prevent significant economic damage if a registered pesticide is not used.

Neonicotinoid pesticides are a class of neuro-active insecticides chemically similar to nicotine. They act on certain kinds of receptors in the nerve synapse which makes them especially toxic to insects.² They are systematic insecticides, which means that once they are applied they are taken in by plants (usually by the root system) and are expressed in their pollen and dew. Any pollinator, including bees, butterflies, and hummingbirds can be affected by this class of insecticides, and there is evidence that colony collapse disorder (mass disappearance of worker bees) is linked to these insecticides.³ The legislation prohibits a County employee or County contractor from using neonicotinoid pesticides, given the evidence of the effect it has on pollinators.

Integrated pest management is an effective and environmentally sensitive approach to pest management that relies on a combination of common-sense practices.⁴ These practices may include pest monitoring, biological controls, trapping and mechanical controls, and the use of least toxic pesticides. The legislation calls for the Health Department to adopt an integrated pest management control program for all property owned by the County. The legislation sets out requirements for such a program, including training for each employee who is responsible for pest management.

County Parks are subject to this legislation by the implementation of a pesticide-free parks program, which will include the maintenance of certain parks entirely without the use of registered pesticides other than listed pesticides. The Maryland-National Capital Park & Planning Commission will be required to take steps that include reducing the use of registered pesticides other than listed pesticides on playing fields, a pilot program consisting of at least five playing fields maintained without the use of registered pesticides other than listed pesticides, and maintaining all other playing fields using integrated pest management techniques. Exceptions again include the control of weeds (as defined); control invasive species listed in a regulation; control disease vectors; control biting or stinging insects or stinging plants; control organisms that threaten the health of trees or shrubs; maintain property as part of efforts by a public utility to comply with applicable vegetation management provisions of any federal, state, or local law or regulation; control indoor pests, if applied around or near the foundation of a building; control pests while engaged in agriculture; and control a pest outbreak that poses an imminent threat to human health or prevent significant economic damage if a registered pesticide is not used. This policy underlines the concerns that registered pesticides have on human and animal life, especially on children and younger adults who may utilize playing fields more frequently.

² <https://citybugs.tamu.edu/factsheets/ipm/what-is-a-neonicotinoid/>

³ Beyond Pesticides staff, Washington DC

⁴ <https://www.epa.gov/safepestcontrol/integrated-pest-management-ipm-principles>

The legislation's provisions for signage being posted before and after application of pesticides provides for the public's notice of where and when pesticides have been applied. This provision applies to both *residential applicator* as well as a *custom (commercial) applicator*. The signs will be standardized by the Health Department for ease of providing information; exceptions to the signage will be made by the Health Officer, and may include properties that have restricted access or removed from public proximity, such as golf courses, and utility rights-of-way.

The legislation calls for, as a policy of this Bill, additional resources to the public on information about pesticides and its application. This includes the Health Officer's requirement to provide information which explains the notice provisions; retailers' requirement to provide signage to customers with details of pesticides, including precautions and alternative products; and an outreach and education campaign implemented by the County Executive that includes mailers, internet and web-based resources, public service announcements, and hard-copy information available at various public venues. Additionally, *custom applicators* will give customers (after application) precautions of pesticides, safe practices of pesticide use, licensing information of applicators, a list of pesticides used, and contact information for County departments for assistance or to file a complaint.

There are also retail handling and storage requirements outlined in the legislation. These instructions should provide for better guidance and practices for store owners and staff for the transport, display, and clean-up of pesticides in the retail environment.

Fiscal Impact

- Direct Impact

Enactment of CB-065-2019 may have a positive fiscal impact on the County related to the collection of civil fines issued to violators of these regulations. An adverse fiscal impact may be realized by the County related to the public outreach and education campaign required to be established and implemented before and during the implementation of the regulations as a result of any increase in administrative burden placed upon staff. The required training of staff who are responsible for pest management may also increase the amount of adverse fiscal impact incurred by the County resulting from any costs incurred related to the additional training. An adverse impact may also be realized by the Maryland-National Capital Park and Planning Commission due to any additional administrative burden incurred related to the semi-annual reporting requirement. At this time, we are unable to determine the net fiscal impact which may result from the enactment of CB-065-2019.

- Indirect Impact

Enactment of CB-065-2019 may have a positive indirect fiscal impact by protecting the environment, the health of County residents, and the food and water supply thereby encouraging economic growth and development within the County.

Appropriated in the Current Fiscal Year Budget

No.

Issues for Committee Consideration

- *Clarity in definitions and exceptions are critical to the understanding and implementation of this legislation.*
- *The legislation at present does not define which department will carry out the education component (Sec. 12-161.04.08).*
- *Given the Department of Permitting, Inspections, and Enforcement (DPIE) duties, their personnel should be educated on this legislation in assisting in notifying the Health Department on pesticides violations.*
- *The civil fine of \$50 for each violation of this legislation may not be a sufficient deterrent from the perspective of many businesses owners in meeting the requirements of the Bill.*
- *There should be a component of this Bill for municipal buy-in.*
- *Care should be given to the enforcement date of this legislation noting the landscaping companies' need to adjust inventory and contracting and to train personnel in alternative land care techniques.*

Effective Date of Proposed Legislation

Forty-five (45) calendar days after it becomes law.

If you require additional information, or have questions about this fiscal impact statement, please call me.